

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING THAT 60 PERCENT OF EACH AWARD OF PUNITIVE DAMAGES IN A CIVIL CASE BE GIVEN TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO FUND THE CHILDRENS' HEALTH INSURANCE PROGRAM AND OTHER HEALTH PROGRAMS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 27-1-221, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-1-221; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued

pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 2. Section 27-1-221, MCA, is amended to read:

"27-1-221. Punitive damages -- liability -- proof -- award. (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less

1 than beyond a reasonable doubt.

2 (6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury. An
3 award of punitive damages must be unanimous as to liability and amount.

4 (7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not
5 admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a
6 verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be
7 determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as
8 provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be
9 awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

10 (b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons
11 for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the
12 following matters:

- 13 (i) the nature and reprehensibility of the defendant's wrongdoing;
14 (ii) the extent of the defendant's wrongdoing;
15 (iii) the intent of the defendant in committing the wrong;
16 (iv) the profitability of the defendant's wrongdoing, if applicable;
17 (v) the amount of actual damages awarded by the jury;
18 (vi) the defendant's net worth;
19 (vii) previous awards of punitive or exemplary damages against the defendant based upon the same
20 wrongful act;
21 (viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
22 (ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive
23 damages.

24 (c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters
25 listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should
26 be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing,
27 decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and
28 conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

29 (8) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of
30 a defendant's financial affairs, financial condition, and net worth.

1 (9) (a) The prevailing party is entitled to 40% of an award of punitive damages granted in a state court
2 or for a state law claim in a federal court and the state is entitled to the other 60%. The attorney or attorneys for
3 the prevailing party may, as agreed to with that party, be paid up to one-half of that party's 40% share. The state
4 is a judgment creditor with respect to its 60% share. A party preparing a proposed judgment must ensure that
5 the judgment identifies the state as a judgment creditor entitled to 60% of the punitive damages award.

6 (b) There is an account in the state special revenue fund into which the state's share of punitive damage
7 awards must be deposited. The money in the account is statutorily appropriated, as provided in 17-7-502, to the
8 department of public health and human services. The department shall use the money in the account to fund
9 the program established in Title 53, chapter 4, part 10, up to the maximum amount for which the federal
10 government will provide matching funds. Any money remaining in the account must be used by the department
11 to fund other health programs administered by the department.

12 (c) The prevailing party shall, upon entry of a verdict awarding punitive damages and again upon entry
13 of a judgment that is based on a verdict awarding punitive damages, notify the department of public health and
14 human services of the verdict or award. The notice must be in writing and delivered to the department within 5
15 business days after entry of the verdict or judgment.

16 (d) A payment by or on behalf of a defendant on a judgment awarding compensatory and punitive
17 damages must be first applied to compensatory damages, costs, and attorney fees awarded against that
18 defendant, with any remaining amount applied to punitive damages awarded against that defendant, unless
19 those applications are contrary to the express terms of the judgment or unless all affected parties, including the
20 state with respect to its share of a punitive damages award, agree otherwise.

21 (e) A judgment creditor under a judgment that includes punitive damages who receives a payment on
22 the judgment by or on behalf of a defendant shall within 5 business days give written notice of the payment to
23 the attorney for any other judgment creditor under the judgment."

24
25 NEW SECTION. Section 3. Applicability. [This act] applies to causes of action arising after [the
26 effective date of this act].

27 - END -